

March 15, 2004

Anthony Clemente  
Vice-President  
PBSJ  
2001 N.W. 107<sup>th</sup> Avenue  
Miami, FL 33172

**RE: REQUEST FOR ADVISORY OPINION 04-21**

Dear Mr. Clemente:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the firm's ability to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. PBSJ will be serving on a team with Initial Engineers, P.A., Tasmum Uddin & Associates International, Inc., BEA International and Morgan and Eklund, Inc.

In your request, you advised the Ethics Commission that the Seaport recently issued a Notice to Professional Consultants to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. The scope of services will include but not be limited to the design and rehabilitation of cargo yard facilities, support infrastructure and ancillary services. The selected firm

will also provide program monitoring services. Other projects may also be added to the scope of services.

The NTPC requires proposers to identify whether they or any of their sub-consultants, or members have participated in any way in the development of previous Cargo Yard Improvements for the Seaport Department, including but not limited to, the scope of services identified for this project.

PBSJ previously designed Container Cargo Wharves 1-4 at the Port of Miami. From 1997 to 2000, PBSJ also did structural engineering work for Wharf 5 as a subconsultant to BEA on a Bond Engineering Contract at the Seaport. In 2003, PBSJ performed a structural/evaluation study of Container Cargo Wharves 1 through 5.

BEA currently has a contract to provide Capital Development Services and Bond Engineering Services at the Seaport. Under the Bond Engineering agreement, as a prime consultant, BEA has supervised work related to engineering and design of Container Cargo Wharves. BEA does not have any current work orders related to cargo yards at the Seaport.

Initial Engineers, P.A. has not performed any architectural and engineering services related to Cargo Yard improvements at the Seaport.

Tasmum Uddin & Associates International, Inc. has not performed any architectural and engineering services related to Cargo Yard improvements at the Seaport.

Morgan and Eklund, Inc. has not performed any architectural and engineering services related to Cargo Yard improvements at the Seaport.

The Ethics Commission found that PBSJ and the other team members may perform architectural and engineering services related to Cargo Yard Improvement for the Seaport. The firms are not engaged in any cargo work for the Seaport that should conflict with the work to be performed under the Cargo Yard Improvements agreement.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to award. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

PBSJ and the other team members do not have any of the conflicts enumerated in the Ethics Commission's prior opinions. PBSJ's prior work on other cargo yard projects has been completed and should not interfere with any work under the current agreement. Further, BEA's work on the Bond Engineering agreement should not require them to perform any contract management responsibilities in regard to the Cargo Yard Improvements contract. Therefore, PBSJ and the other team members may perform services on the Cargo Yard Improvements project.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any

conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

ROBERT MEYERS  
Executive Director

Cc: Luisa Millan Donovan, CICC